

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN AUBYN A. CURTISS**, on March 1, 2001 at 3:41 P.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Aubyn A. Curtiss, Chairman (R)
Rep. Tom Dell, Vice Chairman (D)
Rep. Douglas Mood, Vice Chairman (R)
Rep. Dee Brown (R)
Rep. Roy Brown (R)
Rep. Gary Forrester (D)
Rep. Carol C. Juneau (D)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Alan Olson (R)
Rep. Trudi Schmidt (D)
Rep. Bob Story (R)

Members Excused: None.

Members Absent: None.

Staff Present: Staci Leitgeb, Committee Secretary
Stephen Maly, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 474, 2/25/01

HEARING ON HB 474

Sponsor: REP. PAUL SLITER, HD 76, Flathead Valley

Proponents: Gary Feland, PSC
REP. DAVE GALLIK, HD 52
Rachel Haberman, Energy Share
Tom Daubert, Ashgrove Cement

Warren McConkey, Flathead Electric

Opponents: **Jerome Anderson, PPL Montana**
 Dave Kinnard, PPL Montana
 Ken Morrison, PPL Montana
 John Alke, MDU
 Tom Ebzery, Puget Sound Energy, Pacific Corp,
 Avista Corp, Portland General Electric
 Jim Mockler, Montana Coal Council
 Webb Brown, Montana Chamber of Commerce
 Con Malee, Energy West Resources
 Mary Whittinghill, Montana Tax Payers Association
 Don Allen, Western Environmental Trade Association
 Carl Nyman, Anaconda Project Facilitaters

Informational Witnesses: **Pat Corcoran, Montana Power Company**
 Holly Franz, Advanced Silicon Materials
 Incorporated

Opening Statement by Sponsor:

REP. PAUL SLITER, HD 76, Flathead Valley, stated this piece of legislation dealt with consumer protection and working family protection. He explained how the restructuring took place in 1997, and several things have happened through the years. Many of the industrials have opted out of the default supplier scenario. When the eighteen month contracts ran out so did their affordable power and across the west there was a shortage of electricity. He added the demand was higher than the supply and that has driven the prices higher than what was anticipated, putting us in an energy crisis. It is possible industrials should have stayed with the default suppliers longer than they did. He believes we should not punish those employers and employees for a mistake that was made. HB 474 attempted to help those industrials by providing a stable bridge through the transition period, and until stabilization of the market. This bill places a tax at the generation level during the wholesale transaction. Revenue is going to be necessary in order to provide for some stability in the prices Montanans would pay until the stabilization of the market occurs. He felt deregulation in Montana was a good idea and the free market should be allowed to run its course.

Proponents' Testimony:

Gary Feland, PSC, supported many of the concepts in the bill. He felt the bill was needed, but it also needed a lot of work. He

added they should leave no stone unturned while searching for a solution towards the energy problems of Montana.

REP. DAVE GALLIK, HD 52, supported the legislation and added it was a very good concept. He mentioned the differences of another bill affecting this legislation. He felt this bill could be something for the people of Montana and show how this legislature did do something with regard to the energy situation. He thought the bill would need to be amended, adding some of the aspects of high cost energy relief for consumers.

Rachel Haberman, Energy Share of Montana, supported the low income set aside portion of HB 474 found in Section two. She mentioned since the mid-1980s Energy Share had been receiving oil overcharge funds, but that would end on June 30, 2001. They would lose about one million dollars per biennium. She hoped that some of the low income set aside in this bill would be used to replace those funds.

Tom Daubert, Ash Grove Cement Company, supported restructuring and added Montana faces a grossly dysfunctional market currently. That threatens the survival of every industry in Montana which chose to leave the system.

Warren McConkey, Flathead Electric Cooperative, Energy Northwest, shared some background of FEC. He expressed concern that business customers be treated fairly in electricity pricing. They were the only cooperative that would be exposed to the market place. They were not concerned about the past history, but concerned about what was going to take place soon, the future contracts were going to be a problem. The electric industry was complex in scheduling, it has reserves, supply and demand, transmission constraints and needs guidance through the transition period. He said they do not have the option to shut down because they have an obligation to serve.

Opponent Testimony:

Jerome Anderson, PPL Montana, submitted written testimony **EXHIBIT (feh47a01)**.

Dave Kinnard, PPL Montana, submitted written testimony **EXHIBIT (feh47a02)**.

Ken Morrison, PPL Montana, said under this bill the WET tax receipts would be deposited in the state general fund. There was no direct connection between the increased tax and reduction in consumers' electricity rates, instead they would see an increase

in their bill because the tax would be passed through to the consumers. Any reduction in consumers' bills must come from corporate tax credits claimed by the default supplier and any rate reduction offered by the PSC would likely not occur until 2004. He referred to a chart and explained the tax credits.

John Alke, Montana-Dakota Utilities, felt the bill would raise the WET tax and the rates that customers would pay. He added there were only 24,000 customers on their system. If this bill were to pass in its current form, it would have customers writing a check for more than \$100 to subsidize rates for customers on the MPC system. He was confident there would be an unintended result and he had prepared an amendment to fix that problem. He presented it to the committee **EXHIBIT(feh47a03)**.

Tom Ebzery, Puget Sound Energy, Pacific Corp, Avista Corp, Portland General Electric, submitted a written testimony **EXHIBIT(feh47a04)**. He handed out an article on power bills rising **EXHIBIT(feh47a05)** supplemental information **EXHIBIT(feh47a06)**.

Jim Mockler, Montana Coal Council, wondered they there would be a price problem if there was not a supply problem. He said they would hear from a former supplier about high rates. He felt the market was screwed up and wondered who owned the power in the state. Montanans didn't choose to benefit and invest in the power generated in this state when they had the opportunity. He opposed the legislation and didn't think it would accomplish anything for the state.

Webb Brown, Montana Chamber of Commerce, said there could be a chilling effect on potential development in the future. He didn't think that was the intent of the bill.

Con Malee, Energy West Resources, opposed the bill and said Energy West Resources was currently the largest electric marketer as a result of deregulation in Montana. The passage of this bill would kill deregulation for the next five years. This bill may provide a competitive advantage to out-of-state generators currently marketing to Montana customers, but it was designed to penalize certain companies in Montana, and would damage many others in the process.

Mary Whittinghill, Montana Tax Payers Association, said her organization was concerned about the energy issues in Montana, but they don't believe that using taxation is the solution to problem.

Don Allen, Western Environmental Trade Association, was dismayed with the implications of this bill. Many of their members were people who worried about whether or not they could survive. There has to be some way to deal with the issue. He didn't think the bill was the way to do it.

Carl Nyman, Anaconda Project Facilitators, said that they were currently working on three projects with industrial customers in various stages of planning and development for energy generation. This bill would effectively stop those projects, all of which would provide increased jobs and a tax base for Montana. He added this bill would force those developers to abandon Montana.

Informational Testimony:

Pat Corcoran, Montana Power Company, presented a chart **EXHIBIT (feh47a07)** and explained the calculations of WET Tax proposals.

Holly Franz, Advanced Silicon Materials Incorporated, said they were in an unusual position. She said they were originally exempted from the WET tax because they were offered a contract from MPC to entice them into moving into the state. It was a long-term contract, so they have never been subject to choice. Because of that, they were exempted from the WET tax. This bill allowed consumers an electricity supplier prior to July 1, 2001, to make an election back to the default supplier. Her concern with language in the bill was it wouldn't include ASMI because they never made that selection, but yet they were not with the default supplier.

Questions from the Committee:

REPRESENTATIVE GARY MATTHEWS asked the sponsor how he felt about the MDU amendment. **REP. SLITER** said he would consider the amendment to be a friendly amendment. He didn't anticipate Montanans footing the bill for other Montanans.

REP. MATTHEWS asked if an amendment to exclude future generation in Montana could be added. **Mr. Kinnard** thought it would create some problems with discriminatory conduct.

REP. MATTHEWS asked how he felt about the MDU amendment. **Mr. Kinnard** said he would have the same difficulty when trying to pick and choose who should or shouldn't be covered by particular pieces of taxation.

REP. MATTHEWS asked about regulation. **John Alke** responded he fundamentally disagreed with Mr. Kinnard's remarks. He said his client was a vertically integrated utility with an obligation to serve. All of its generation and processes were regulated and they had no excess supply to their demand. He added they had no ability to capture the super profits as would PPL and MDU.

REP. TOM DELL asked the sponsor for a response towards lessening the load due to no incentive of generating new supply because of the tax increase. **REP. SLITER** said this was designed to be a bridge, and in the interim between when this bill would be effective and when the market stabilizes, an exemption for new generation would be advisable.

REP. DELL thought the perception was PPL was out to plunder and pillage and our response was to tax them into submission. **REP. SLITER** stated to a certain extent the characterization was accurate. He thought Montanans would expect companies to do business in Montana and make a fair profit.

REP. DELL asked the sponsor of his visions for the bill. **REP. SLITER** said it dealt with a timing issue within the bill, which needed work and was worth doing.

REP. SCHMIDT asked how to amend and work on the bill. **Mr. Feland** mentioned one of the issues dealt with the timing on when the tax would kick in, who would be taxed etc.

REP. SCHMIDT asked if he could be more specific on the tax as a whole and the impact on the industry. **Mr. Feland** said the tax needed to be adjusted according to what the market would be, in order to deliver affordable electricity to the rate payers.

REP. SCHMIDT asked about the companies mentioned in testimony. **Mr. Feland** believed some of the companies, outside of the default supplier, would probably be exempt. New generation ought to be exempt in order to encourage generation. He stated currently 50% of our power goes out of the state.

REP. SCHMIDT asked if new generation should be built in Montana. **Mr. Feland** answered yes, it absolutely should be.

REP. GARY FORRESTER asked for a response to as to whether this would have a chilling effect on new industries. **Mr. Feland** said this tax would have an effect on the people in the default supplier group. He didn't think that it would affect any of the ones outside of that.

REP. FORRESTER asked the same question to another proponent **Mr. Brown** felt it would have that effect.

REP. FORRESTER worried the legislature was getting into a realm of telling companies how much profit they could make. **REP. SLITER** thought by providing some of the exemptions that were discussed earlier, some businesses could look at the opportunity to come into Montana and purchase inexpensive power to operate their businesses.

REP. FORRESTER asked about people making big profits on the stock market. **REP. SLITER** said they would already be taxed on the capital gain of the sale of that stock and the mechanism was in place. He didn't see the correlation of the two.

REP. FORRESTER asked if this bill was brought forward to be used as a hammer over PPL's head to lower the price of power in a futures contract or a buy-forward contract. **REP. SLITER** said the intent of the bill was to provide a mechanism to put inexpensive power into the homes and businesses of Montanans.

REP. ROY BROWN asked for clarification of the mechanism and how the tax was paid. **REP. SLITER** said it may not actually be the WET tax, it may be a license tax. What this contemplates was the tax to be passed all the way through as a line item, which he didn't anticipate to be the case. The WET tax revenue, as the bill was written, comes into the general fund.

REP. BOB STORY asked for clarification of the chart. **Mr. Corcoran** replied the information was taken from a fiscal note that accompanied the original WET tax bill in 1999. The WET tax came from two different places. The portion related to Montana investor-owned generation that was delivered in the state and assessed at the customer level.

REP. STORY referred to lines 33 to 37 of the chart and wondered if the actual amount of kilowatt hours were consumed on the default supplier system. **Mr. Corcoran** answered yes, that was correct.

REP. STORY asked for clarification regarding the statement PPL would be subsidizing the lower contract price to \$2 billion dollars. **Mr. Kinnard** said it would be a combination of the delta between what the power was sold to under the WTSA to the Montana consumers versus what the market price was for that power.

REP. SCHMIDT asked if there would be additional generation and how would there be price problems. **Mr. Kinnard** explained the difficulty with the new plants, and they researched a five to eight year window before they would have those plants operating.

REP. SCHMIDT asked what the trade-off would be if the legislature didn't increase the WET tax, so the price of power was reasonable. **Mr. Kinnard** stated they would continue to talk to the legislature in a fashion of trying to come up with some constructive solutions that will afford Montana consumers and industrials a fair price of power.

REP. STORY asked, assuming going from 2.25 to 6 cents would generate another \$315 million in revenue from the MPC contract, what did PPL pay for the generating facility? **Mr. Kinnard** said the up-front payment was \$757 million.

REP. STORY asked if PPL invested the amount in this project, would it be a good return on their investment if they could pay it off in three years. **Mr. Kinnard** said, there were a lot of unforeseen circumstances and it is difficult to know.

REP. CAROL JUNEAU clarified Montana was selling 50% of its energy out of state. **Mr. Feland** thought it was approximately 60%.

REP. JUNEAU asked why the need for more power plants. **Mr. Feland** said MDU could generate electricity for 3.7 cents. When the contracts go off on the moratorium, it would be 6 cents per kilowatt hour. The California market was broken and that was where the power was going.

REP. JUNEAU asked if the sponsor gave any consideration to using a portion of the revenue to support specific state responsibilities such as education. **REP. SLITER** replied the money would enter into the general fund as a result of this tax, under the bill, but wouldn't stay in the general fund. It was meant for the tax credits.

REP. JUNEAU said the bill mentioned a portion of the money going to the low income assistance and she asked if that included the three portions involved. **REP. SLITER** understood it was under 69-8-412, subsection (1) and subsection (b) for one program, so it would be only one component.

Closing by the sponsor:

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{Tape 2; Side A}

REP. SLITER didn't want to discourage new generation in Montana, but to encourage it over the long term. If an exemption for new generation was necessary then that would be something they should research. He suggested changing the tax from a dollar value to a percentage of the price per kilowatt hour, as the price fluctuates, the revenue would also. He wanted to note again how it appeared the timing in the bill for the credits may need some adjustments. He thought it was a dangerous thing for Montanans to see resources leave Montana. If our resources were being used to generate power that wasn't used, there was a problem. He addressed the intent of the bill to provide a concept or mechanism over the next several years ensuring affordable energy to be produced within the state.

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ADJOURNMENT

Adjournment: 5:17 P.M.

REP. AUBYN A. CURTISS, Chairman

CECILE M. TROPILA, Transcriptionist

AC/RL

EXHIBIT (feh47aad)